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DAN E. ARNETT
CHIEF OF STAFF

August 3, 2005

VIA HAND DELIVERY

Mr. Charles L.A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
101 Executive Center Dr., Suite 100
Columbia, SC 29210

Re: Generic Proceeding to Investigate Emergency Services Continuity Plans
Docket No. 2005-100-C

Dear Mr. Terreni:

Enclosed for filing please find the original and twenty-six (26) copies of the Direct Testimony and Exhibits of Mak Moore in the above referenced matter. Please date stamp the extra copy enclosed and return it to me via our courier.

Also, we have served same on all parties of record and enclose a Certificate of Service to that effect.

Please let me know if you have any questions.

Sincerely,

Benjamin P. Mustian

BPM/rmg
Enclosures

cc: Stan J. Bugner, State Director
Scott Elliott, Esquire
Margaret M. Fox, Esquire
Steven W. Hamm, Esquire
Jo Ann Wessinger Hill, Esquire

Charles L.A. Terreni

August 3, 2005

Page 2 of 2

John J. Pringle, Jr., Esquire

Bonnie D. Shealy, Esquire

Patrick W. Turner, Esquire

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2005-100-C

IN RE:

Generic Proceeding to Investigate)	
Emergency Services Continuity Plans)	CERTIFICATE OF SERVICE
_____)	

This is to certify that I, Rena Grant, an employee with the Office of Regulatory Staff, have this date served one (1) copy of the **Direct Testimony and Exhibits of Mak Moore** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

Stan Bugner, State Director
Verizon South, Inc.
1301 Gervais Street, Suite 825
Columbia, SC 29201

Scott Elliott, Esquire
Elliott & Elliott, P.A.
721 Olive Street
Columbia, SC 29205

Margaret M. Fox, Esquire
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Post Office Box 11390
Columbia, SC 29211

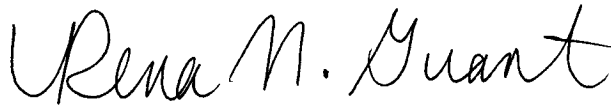
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BellSouth Telecommunications, Inc.
1600 Williams Street, Suite 5200
Columbia, SC 29201



Rena N. Grant

August 4, 2005
Columbia, South Carolina

TESTIMONY OF MAK MOORE

FOR

THE OFFICE OF REGULATORY STAFF

DOCKET NO. 2005-100-C

IN RE: GENERIC PROCEEDING TO

INVESTIGATE EMERGENCY SERVICES

CONTINUITY PLANS.

SC PUBLIC SERVICE
COMMUNICATIONS
2005 APR -3 PM 2:01
TALLAHASSEE, FL

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.

A. My name is Mak Moore. My business address is 1441 Main Street, Columbia, South Carolina. I am employed by the Office of Regulatory Staff ("ORS"). I hold the position of Telecommunications Specialist.

Q. WOULD YOU PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND YOUR BUSINESS EXPERIENCE?

A. I received a B.S. Degree in Engineering from the University of South Carolina in May of 2000. I received a Master's Degree in Business Administration from the University of South Carolina in May of 2005. I was employed by BellSouth as an Outside Plant Engineer in May of 2000. After three years as an Engineer I was promoted to Network Manager. After one year as a Network Manager I left BellSouth and was employed by the Office of Regulatory Staff in November 2004 to work in the telecommunications department.

1 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

2 A. No.

3 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

4 A. The purpose of my testimony is to respond to the Public Service Commission's ("the
5 Commission") Order No. 2003-218 establishing this proceeding to explore the
6 general concept of an emergency services continuity plan. In addition, ORS has
7 commented on specific issues raised by the commission in its public notices.

8 **Q. BRIEFLY EXPLAIN WHAT ACTIONS THE OFFICE OF REGULATORY
9 STAFF UNDERTOOK IN PREPARATION FOR THIS PROCEEDING.**

10 A. In preparation for this proceeding, ORS investigated other states within the
11 BellSouth nine state region to determine whether other state utility commissions had
12 initiated similar proceedings to address the concept of an emergency services
13 continuity plan and reviewed the Federal Communications Commission's ("FCC")
14 responsibilities in this matter. ORS also examined the impact on consumers of
15 recent market exits by Competitive Local Exchange Carriers ("CLECs") in South
16 Carolina.

17 **Q. WHAT OTHER STATES IN THE BELL SOUTH REGION HAVE
18 ADDRESSED THIS MATTER?**

19 A. Florida, Kentucky, Mississippi and Tennessee have addressed the matter, while
20 North Carolina, Georgia, Louisiana, and Alabama have not.

21 **Q. WOULD YOU SUMMARIZE THE FINDINGS FROM OTHER STATES?**

1 A. Florida and Kentucky currently have tariffs in effect which are comparable to the
2 BellSouth General Subscriber Service Tariff that was previously filed with this
3 Commission. A copy of the Florida tariff is attached as Exhibit MM-1. Along with
4 BellSouth's Tariff for Incumbent Local Exchange Carriers ("ILECs") other than
5 BellSouth, the Kentucky Public Service Commission adopted rules stating that
6 "ILECs shall notify the Commission on a case by case basis when carriers cease to
7 serve in their relevant areas. Prior to disconnecting a Competitive Local Exchange
8 Carrier ("CLEC") for failure to pay carrier charges or for other reasons, the ILEC
9 shall notify the commission in writing and shall propose a plan for addressing
10 customer notice and service issues." The Kentucky order is attached as Exhibit
11 MM-2. The Mississippi Public Service Commission has issued an order establishing
12 rules to govern Discontinuance of Service by Competitive Local Exchange Carriers;
13 the Tennessee Regulatory Authority has proposed rules that address the issue which
14 are currently being reviewed but are not yet in effect. A copy of the Tennessee
15 Regulatory Authority's rules is attached as Exhibit MM-3.

16 **Q. WHAT, IF ANY, EMERGENCY SERVICE CONTINUITY PLAN SHOULD**
17 **BE ADOPTED BY THE COMMISSION FOR CUSTOMERS WHO HAVE**
18 **LOST SERVICE DUE TO A SERVICE PROVIDER'S ABANDONMENT OF**
19 **SERVICE?**

20 A. Although the FCC's rule 47 CFR 63.71 addresses the issue of CLEC's leaving a
21 market, it does not seem to be sufficient for a situation where a CLEC has failed to
22 notify its customers or lacks the financial resources to do so. Therefore, it is the

1 opinion of ORS that it is in the public interest for the Commission to adopt rules or
2 procedures to handle this type of emergency. ORS believes the Commission should
3 adopt rules or procedures that require the following:

4 1. If the underlying carrier plans to terminate service to a CLEC due to non-
5 payment, the underlying carrier will provide thirty (30) days notice of the
6 disconnection of service to the ORS and the Commission. Notification to the CLEC
7 is to be made pursuant to the provisions of their resale agreement with the
8 underlying carrier.

9 2. It is the responsibility of the CLEC to notify its customers in writing no less than
10 thirty (30) days of the pending disconnection of its service.

11 3. The CLEC shall refund to its end users any monies due as a result of pre-paid
12 services.

13 4. In the event the CLEC fails to meet its obligation to notify the customers prior to
14 abandonment of service, the Commission will provide public notice that the CLEC
15 has abandoned its customers. The Commission will issue an order removing the PIC
16 freezes on the end users lines and implementing the emergency services continuity
17 plan. The ILEC will notify the end users of the impending disconnection.

18 5. From the abandonment date or disconnection of service date, the underlying
19 carrier shall provide service to the customer for fourteen (14) days or until the end
20 user chooses a new service provider.

21 **Q. WHAT IS A PIC FREEZE?**

1 A. A "preferred carrier freeze," also known as a PIC freeze, prevents the unauthorized
2 switching of a customer's service provider. Although originally the term PIC freeze
3 meant Primary Inter-exchange Carrier Freeze, it now applies to local service as well.

4 **Q. WHAT DOES THE ISSUE OF PIC FREEZES HAVE TO DO WITH THIS**
5 **PROCEEDING?**

6 A. When a CLEC purchases services from an ILEC, the CLEC places a PIC freeze on
7 the line to prevent slamming, or the practice of switching an end user's service
8 provider without their permission. In most instances, once the end user consumers
9 are notified of their impending loss of phone service, they attempt to switch to a new
10 carrier. The end user is unable to port the number to a new carrier since the CLEC
11 placed a PIC freeze on the end user's number. Since the CLEC is the customer of
12 the underlying carrier, the CLEC must remove the freeze from the end user's
13 number. Therefore, the CLEC that has abandoned service to the end user is the same
14 CLEC that has sole authority to remove the PIC freeze. The end user then calls the
15 underlying carrier in an attempt to remove the freeze from their number to find out
16 that the CLEC who has abandoned service must remove the freeze on their number
17 because the CLEC, not the end user, is the customer of the underlying carrier.
18 Because CLECs do not always notify the end user prior to exiting the market, the
19 end user does not find out about the abandonment of service until after the end user's
20 service has been disconnected. As the CLEC has already gone out of business, the
21 end user may have a difficult time getting the CLEC to cooperate and lift the PIC

1 freeze. This situation can cause considerable delay and an extensive interruption of
2 service to the end user consumer.

3 **Q. WHY DOES ORS BELIEVE THIS ISSUE WILL BECOME MORE**
4 **PREVALENT IN THE IMMEDIATE FUTURE?**

5 A. On February 4, 2005, the FCC issued its Triennial Review Remand Order ("TRRO")
6 in Dockets No. 04-313 and 01-338. In this order, the FCC effectively eliminated the
7 requirement that incumbent local exchange carriers provide various unbundled
8 network elements ("UNEs") at TELRIC prices. The Order provided that, as of
9 March 11, 2005, ILECs were not required to provide UNEs for new customers of
10 CLECs; however, the Order did establish a transition period for existing customer
11 bases such that ILECs would be required to continue to make UNEs available to
12 CLECs until March 10, 2006. At such time, CLECs will have to transition their
13 interconnection agreements to purchase UNEs at market or contract rates or will
14 have to install certain facilities in order to continue to serve their customers.
15 ORS anticipates that many non-facilities based CLECs will be unable to remain in
16 business if they opt to purchase UNEs at market or contract prices due to the
17 increased cost and resulting diminished profitability. Further, these CLECs may not
18 have the financial resources to be unable to install the necessary switches and other
19 facilities. As CLECs exit the market, ORS believes the inability of customers to
20 change providers due to CLEC imposed PIC freezes will become an increasing
21 problem.

1 **Q. HOW DOES THE ORS PROPOSE THE COMMISSION RESOLVE THIS**
2 **PROBLEM?**

3 A. Although the FCC has rules that prevent unauthorized switching of carriers, we
4 believe that the South Carolina Public Service Commission would be acting within
5 its jurisdiction and in the public interest if it adopted rules or procedures to allow,
6 pursuant to a Commission order, the removal of the PIC freeze on an end user's
7 number in the case of abandonment of service by a CLEC.

8 **Q. DOES THE COMMISSION HAVE AUTHORITY TO ISSUE SUCH AN**
9 **ORDER?**

10 A. ORS has determined that it does. The FCC regulations provide that a
11 telecommunications carrier shall not execute a change on the behalf of a subscriber
12 in the subscriber's selection of a provider of telecommunications service except in
13 accordance with authorized procedures; however, the regulations specifically
14 provide that nothing shall preclude any State commission from enforcing these
15 procedures with respect to intrastate services. Further, the regulations specify that a
16 preferred carrier change order may be submitted and executed once it has been
17 verified. An appropriate method of verification is by following any "State-enacted
18 verification procedures applicable to intrastate preferred carrier change orders only."
19 47 C.F.R. § 64.1120. Additionally, South Carolina has elected to administer the
20 Federal Communication Commission's unauthorized carrier change rules and
21 remedies as allowed by 47 C.F.R. § 64.1110; therefore, ORS believes the
22 Commission has been granted the authority to determine how such change orders

1 may be executed and has the ability to enforce the FCC's rules regarding PIC
2 freezes.

3 **Q. WHO SHOULD BE RESPONSIBLE FOR MAINTENANCE OF**
4 **EMERGENCY SERVICE ACCESS DURING PERIODS OF SUSPENSION**
5 **OF SERVICE?**

6 A. The underlying carrier of the CLEC customer's service would be in the best position
7 to continue to provide interim service and to maintain the customer's access to
8 service during this interim period. However, it is ultimately the responsibility of the
9 end user to request service from a new carrier after notification that service will be
10 discontinued due to abandonment of service by the CLEC.

11 **Q. HOW SHOULD THE RECOVERY OF COSTS FOR PROVIDING INTERIM**
12 **SERVICE BE HANDLED?**

13 A. The underlying carrier should bill the new service provider for services rendered in
14 the interim. Ultimate payment for these services should be the responsibility of the
15 end user. Therefore the end user should be given the option of immediately
16 disconnecting his service rather than maintaining it through an interim period. If the
17 customer has an outstanding balance with the underlying carrier from previous
18 business arrangements, the underlying carrier should attempt to work out payment
19 options. If this fails, the underlying carrier will only be required to provide soft dial
20 tone (911 service) to the customer for fourteen (14) days or until the customer
21 chooses a new service provider.

1 **Q. HOW SHOULD PERSONAL INFORMATION BE HANDLED DURING**
2 **THESE INTERIM PERIODS?**

3 A. Each Local Exchange Carrier ("LEC") which offers interim service to customers
4 who have been abandoned by their carrier should use customer billing records and
5 information only to the extent that it is necessary to provide interim service. Such
6 information should not be disclosed to other companies or used to market the goods
7 and services of the LEC to those customers. To allow otherwise would be an anti-
8 competitive practice. Such information sharing among all the carriers would not be
9 appropriate. Customer information such as name, address, calling habits, or any
10 other information should not be disclosed.

11 **Q. IN CONCLUSION, DOES ORS HAVE ANY RECOMMENDATIONS?**

12 A. After consideration of the information obtained from other states and information
13 filed in Docket Number 2005-100-C, ORS is of the opinion that the public interest
14 would be best served if the Commission adopts a plan to maintain service to
15 customers during an interim period of fourteen (14) days which will allow them to
16 choose a new carrier without experiencing any interruptions in service. ORS also
17 believes that it would be in the public interest for the Commission to adopt rules or
18 procedures that would allow the Commission to issue an order directing the ILEC to
19 remove the PIC freeze placed on the end user's number by a CLEC.

20 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

21 A. Yes, it does.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: August 6, 2002
BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Second Revised Page 21
Cancels First Revised Page 21

EFFECTIVE: August 21, 2002

A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS**A5.7 Contract Service Arrangements (Cont'd)****A5.7.1 General (Cont'd)**

- F. The subscriber and the Company may elect to enter into an agreement where certain rates and/or charges for contract service arrangements are applicable for a fixed period of time. The Company will continue to offer such contract service arrangements without change in the applicable rates and/or charges unless mutual consent has been reached between the Company and the subscriber to undertake such changes. The Florida Public Service Commission will not adjust contract service arrangement rates and/or charges during this period. At the completion of this period, the agreement may be renewed at the option of the Company and the subscriber. Revised rates and/or charges may apply to any renewed agreement. (T)

A5.8 Emergency Service Continuity Plan**A5.8.1 General**

The Company will provide Emergency Service Continuity as described in this Section subject to the rates, terms and conditions stated. Service is provided subject to a determination by the Commission, either upon petition by the Company or upon the Commission's own motion, that an Alternative Local Exchange Company (ALEC) has effectively abandoned its end users or that some other sufficient emergency exists to justify use of this tariff. (N)

A5.8.2 Explanation of Terms**ABANDONMENT DATE**

The date determined by the Commission that an ALEC abandoned its end users, or the date that some other sufficient emergency exists to justify use of this tariff. (N)

ABANDONED END USER

The former subscriber of an ALEC that receives service under A5.8 of this Tariff. (N)

ALEC

Alternative Local Exchange Company. (N)

EMERGENCY SERVICE CONTINUITY

The service provided pursuant to this tariff. (N)

NEW SERVICE PROVIDER

The service provider affirmatively chosen by an Abandoned End User. A New Service Provider can be either an ALEC or the Company. (N)

UNE-P

The unbundled network element-platform service provided by the Company to an ALEC under an interconnection agreement. (N)

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: August 6, 2002
BY: Joseph P. Lacher, President -FL
Miami, Florida

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 22

EFFECTIVE: August 21, 2002

A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS**A5.8 Emergency Service Continuity Plan (Cont'd)**

(N)

A5.8.3 Application

(N)

- A. From the abandonment date until an Abandoned End User is transitioned to a New Service Provider, or until denial or disconnection of service as provided in A5.8.4 following, the Company will provide each Abandoned End User with the telecommunications service existing at the end user premises at the time of the Company's assumption of responsibility under this Tariff. Abandoned End Users will not be able to modify the telecommunications service until electing a New Service Provider. (N)
- B. The Company will provide maintenance and repair services while providing Emergency Service Continuity. (N)

A5.8.4 Notice

(N)

- A. Promptly after receipt of the Commission determination of abandonment or other emergency, the Company will provide notice to each Abandoned End User through the Company's service facilities and/or public media. The notice will inform each Abandoned End User that: (N)
 - 1. Each Abandoned End User may continue to receive telecommunications service through the Emergency Service Continuity Plan for a minimum period of fourteen (14) days from the date initial notice is given while each Abandoned End User decides upon and transitions to a New Service Provider. (N)
 - 2. After notice has been given to the Abandoned End User and the time period in 1. preceding has transpired, service will be denied unless the Abandoned End User has transitioned to a New Service Provider, or the Abandoned End User has placed an order to transition to a New Service Provider and the order is being processed. When service is denied, the Abandoned End User will be able to call 911 Service, but will be unable to make or receive other calls; (N)
 - 3. After the time period in 1. preceding has passed and a minimum of fourteen (14) additional days have transpired, service will be disconnected unless the Abandoned End User has transitioned to a New Service Provider, or the Abandoned End User has placed an order to transition to a New Service Provider and the order is being processed. (N)
- B. Use of Company facilities may be discontinued without notice at any time after an Abandoned End User has transitioned to a New Service Provider that does not require use of Company facilities. (N)
- C. The Company will provide notice on at least one (1) occasion during the period prescribed in A. preceding. (N)

A5.8.5 Conditions

(N)

- A. Emergency Service Continuity will be provided only where the Company has been the underlying facilities provider through a resale or a UNE-P arrangement with an ALEC. Service Continuity will be provided through other service arrangements (i.e., UNE Loop) upon mutual agreement with the Commission and the ALEC. (N)
- B. The Company must have permission, either directly or through Commission order, to use the customer service record information of an Abandoned End User. (N)
- C. The Company must have a waiver of the Commission requirements for third-party verification of a change in service provider. (N)
- D. The Company must have permission, either directly or through Commission order, not to honor a "preferred carrier freeze" on the Abandoned End User's existing service. (N)
- E. The Company may request permission for an emergency declaration and waiver of the retail Service Rules (F.A.C.), the retail Service Guarantee Plan (Order No. PSC-01-1643-AS-TL), and/or the wholesale Performance Assessment Plan. (N)
- F. The Company shall not be liable for damages or injury to other local exchange or interexchange carriers arising out of the provision of Emergency Service Continuity pursuant to this Tariff. (N)
- G. The Company's liability to Abandoned End Users will be governed by the provisions of A2.5 of this Tariff. (N)

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Original Page 23

ISSUED: August 6, 2002
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: August 21, 2002

A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS**A5.8 Emergency Service Continuity Plan (Cont'd)**

(N)

A5.8.6 Rates

(N)

- A. For each Abandoned End User that selects a New Service Provider other than the Company, the Company will charge the New Service Provider a rate equivalent to the appropriate 2-wire loop, port and feature rates in that provider's interconnection agreement for the period from the abandonment date through the last date the Company provides Emergency Service Continuity. If no interconnection agreement for such rate exists, the Company will charge the rates approved by the Commission for the appropriate 2-wire loop, port and feature rates. Thereafter, the applicable rates, terms and conditions of the interconnection agreement for services ordered by the New Service Provider shall be charged, collected and observed.
- B. For each Abandoned End User that selects the Company as its New Service Provider, the Company may charge the rates applicable to the services provided to the end user by the Company consistent with the Company's General Subscriber Service Tariff from the abandonment date.

(N)

(N)

Westlaw.

Exhibit MM-2

PUR Slip Copy

Page 1

2003 WL 22025081 (Ky.P.S.C.)

(Cite as: 2003 WL 22025081 (Ky.P.S.C.))

C

Re Wireline Telecommunications Carriers Providing Service
Case No. 2002-00310

Kentucky Public Service Commission
May 20, 2003

***1 ORDER**

On August 26, 2002, the Commission established this proceeding to consider the continued reasonableness of billing requirements established for local exchange carriers ('LECs') in 1991 in Administrative Case No. 306. [FN1] On November 1, 2002, the Commission determined that carriers would no longer be required to bill regulated and non-regulated charges on separate rate customer billing sheets. Moreover, no particular font size or message is required on a customer bill; however, non-regulated charges and the notice stating that non-payment of non-regulated items will not result in disconnection of regulated service must be clearly and conspicuously indicated on the consumer bill. The Commission maintained its requirement established in 1991 that customers shall not be disconnected from regulated services for failure to pay unregulated charges.

Still pending in this proceeding are other issues identified by the Commission's August 26, 2002 Order that were not addressed in the November 1, 2002 Order. Thus, we have yet to address the appropriate procedures for notifying end-users when a competitive LEC ('CLEC') ceases to serve in Kentucky, whether through bankruptcy or other cause. We also have yet to address appropriate procedures for an incumbent LEC ('ILEC') to follow when it disconnects for failure to pay carrier charges or other items. It is to these issues we now turn.

An informal conference was held December 4, 2002, during which BellSouth Telecommunications, Inc. ('BellSouth'), Cincinnati Bell Telephone Company ('CBT'), and Kentucky ALLTEL, Incorporated ('ALLTEL') discussed these issues. BellSouth presented its emergency continuation tariff, which is in effect in Florida. BellSouth noted that the exiting provider should advise its own customers. However, because many such carriers have failed to do so, BellSouth provides a continuation plan so that customers may avoid losing telephone service. BellSouth indicated that it would file the same tariff for consideration in Kentucky. On January 7, 2003, the Commission suspended BellSouth's proposed tariff to offer an emergency service continuity plan so that its policy implications could be considered and so that other LECs may comment on its reasonableness.

The emergency service continuity plan proposed tariff filed by BellSouth allows

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2003 WL 22025081 (Ky.P.S.C.)

(Cite as: 2003 WL 22025081 (Ky.P.S.C.))

customers to continue to receive service once this Commission has determined that a CLEC has effectively abandoned its customers or some other emergency exists to justify the implementation of this tariff. This tariff permits BellSouth to provide telephone service to those customers whose carrier has ceased to operate. BellSouth will provide telecommunications service for a minimum of 14 days allowing the customer to select a carrier. To provide this emergency service, BellSouth must obtain permission from customers or through a Commission Order to use customer service record information of the abandoned customers. Moreover, BellSouth must receive a waiver from the Commission for requirements regarding verification of customer change. When a customer selects a new provider, BellSouth will bill that new provider for rates equipment to a two wire loop found in the provider's interconnection agreement for the period of time in which BellSouth provided service to the abandoned customer. If the abandoned customer selects BellSouth, then BellSouth will charge the customer applicable rates from the time it began to provide this emergency continuity service.

*2 The Commission received comments on BellSouth's proposed emergency service continuity plan tariff from ALLTEL, CBT, the Frankfort Electric and Water Plant Board ('Frankfort Plant Board'), and AT&T Communications of the South Central States, Inc. ('AT&T'). ALLTEL indicates that it supports the overall concept of continuity of service procedures. However, it believes that carriers should retain the authority to determine an appropriate methodology and to examine whether market circumstances would necessitate such a plan. ALLTEL argues that such plans should be flexible. ALLTEL does not want BellSouth's proposed tariff to be imposed on any other carrier.

CBT asserts that neither a tariff nor state regulations are required to address the discontinuance of service by a CLEC. CBT argues that the FCC's rule, 47 CFR § 63.71, should be applicable on an in-state basis, as such customer continuity issues would be addressed. CBT also argues for flexibility to address unique circumstances of particular discontinuance of service. No generalized tariff should be required for each carrier in the state according to CBT. CBT asserts that it has worked appropriately with the Commission under these circumstances, providing the Commission with notice of discontinuance of services to CLECs and other similar issues.

The Frankfort Plant Board asserts that it is a facilities-based provider and would not, therefore, be obligated to pay BellSouth for the 14 days of service BellSouth may provide to an abandoned customer who then selects the Frankfort Plant Board. The Frankfort Plant Board further argues that since it was not the provider of service to the customer during that time which BellSouth was providing emergency continuity service, that it could not bill its customer for charges that BellSouth may assess against it. The Frankfort Plant Board also asserts that allowing BellSouth to use confidential customer service records to provide emergency continuity service would give BellSouth an unfair advantage. The Frankfort Plant Board argues that all CLECs operating in a market where a carrier has abandoned service should be given the same access to client information.

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2003 WL 22025081 (Ky.P.S.C.)

(Cite as: 2003 WL 22025081 (Ky.P.S.C.))

AT&T, unlike the other carriers, asserts that the Commission should incorporate any provision for emergency continuity service into its rules and be applicable to all carriers. AT&T agrees that the ILEC would be the only carrier likely to have adequate resources and access to customer information to step in and notify affected customers. Such Commission rules should include, according to AT&T, a statement that the ILEC will not use customer information needed to provide emergency continuity service to market any other service during the time in which emergency continuity service is provided. AT&T also contends that the interval for the provision of emergency continuity service should be extended to 30 days to allow business customers, in particular, an opportunity to consider and evaluate alternatives. AT&T concurs with the Frankfort Plant Board in arguing that BellSouth's tariff provision to require a newly selected carrier to reimburse BellSouth for service during the emergency continuity time is inappropriate. The end-user customer who is receiving emergency continuity service should be billed by the ILEC for the service. Like the other commentors, AT&T believes that the Commission should follow 47 CFR § 63.71 as its procedures for notifying customers of a LEC's cessation of service in Kentucky.

*3 BellSouth responded to AT&T's comments. BellSouth argues that the written notification requirement proposed by AT&T would be too costly. Additionally, ILECs may not even have adequate billing information to properly notify the customers. In response to AT&T's proposal that ILECs be prohibited from marketing their local or long-distance service while they are providing emergency continuity service, BellSouth asserts that the ILEC should have the opportunity to respond to questions from such customers who seek information from BellSouth regarding its services. To do otherwise, according to BellSouth, would be an unreasonable inhibition to BellSouth and create a hardship for customers. Regarding AT&T's suggestion that the continuity plan be in effect for 30 days rather than 14, BellSouth indicates that if it is able to recover its costs, then it would not object to the extension.

AT&T further asserts that ILECs providing emergency continuity service should bill end-users rather than the acquiring carrier. BellSouth responds that this would require the ILEC to establish a retail relationship with the customer and would involve additional costs for which no means of recovery was recommended. Finally, BellSouth argues that it must use customer information which it would not ordinarily be permitted to access because the emergency continuity plan is designed for those circumstances where the abandoning CLEC does not cooperate.

Duo County Telephone Cooperative ('Duo') filed comments regarding issues covered by BellSouth's emergency continuity plan but did not comment on the plan specifically. Duo believes that the carrier that ceases to operate should have the burden of notifying its customers of a date-certain on which operations will stop and provide those customers sufficient time to select another carrier. An exception to this notice would be cessation of service due to bankruptcy. Where bankruptcy is the cause, a public service announcement rather than direct notice would be adequate. According to Duo, if a LEC fails to provide such customer notice, then the Commission should initiate a show cause proceeding. Duo contends

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that under no circumstance should the ILEC be responsible for providing service to abandoned customers. In support of its views, Duo contends that ILECs do not necessarily have billing addresses and other information needed to provide service, that ILECs should not be required to undertake the cost burden without compensation, and that such service may be viewed as anti-competitive.

Regarding the issue of what procedures an ILEC must follow when it disconnects a CLEC for failure to pay, Duo asserts that the ILEC should only be required to notify the CLEC pursuant to their agreements. Notifying the Commission and others should be the CLEC's responsibility.

Sprint Communications Company LP ('Sprint') also filed general comments contending that customers whose carriers are ceasing to serve should be notified by the acquiring carrier.

*4 The Commission has considered all comments and concludes that, in general, the FCC's rule 47 CFR § 63.71 should be followed in Kentucky. The primary responsibility for notifying customers when a carrier exits should be placed on the carrier serving that customer. The exiting carrier should also provide prior notice to the Commission and other relevant officials.

However, this proceeding was initiated for circumstances in which a carrier exiting a market has failed to notify its customers or lacks resources to do so. The Commission finds BellSouth's plan reasonable, and therefore adopts that plan for BellSouth only at this time. However, the Commission expects other ILECs, who are the carriers in a position to enable them to deal with emergencies of this nature, to provide similar service to customers in their service areas should the need arise. The Commission anticipates coordinating with ILECs as to the circumstances which create a need for emergency continuity service for customers who, through no fault of their own, face loss of dial tone.

In addition, when an ILEC prepares to disconnect a CLEC for failure to pay carrier charges or for any other reason, the ILEC must provide the Commission prior notice of the disconnection. The ILEC must also provide the Commission with a plan for addressing customer notice and service issues and should follow procedures similar to BellSouth's emergency continuity plan.

The Commission, having considered the comments in this proceeding and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. BellSouth's proposed tariff for emergency continuity service is approved for implementation by BellSouth.
2. ILECs other than BellSouth shall notify the Commission on a case-by-case basis when carriers cease to serve in their relevant areas.
3. Prior to disconnecting a CLEC for failure to pay carrier charges or for other reasons, the ILEC shall notify the Commission in writing and shall propose a plan

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for addressing customer notice and service issues.

Done at Frankfort, Kentucky, this 20th day of May, 2003.

FOOTNOTES

FN1 Administrative Case No. 306, Detariffing, Billing and Collection Services, Orders dated September 5, 1991 and December 19, 1991.

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1220-4-2-.__ Obligations of Resellers and Underlying Carriers of Local Service upon the Termination of Service

- (1) The purpose of this rule is to protect those customers who are obtaining their local service from resellers from termination of their service without adequate notice. Because of the public safety implications, local service providers shall have additional obligations as listed below.
- (2) This rule applies to any local telecommunications reseller that ceases the provision of any telecommunications service in all or any portion of the state of Tennessee. This rule does not apply to:
 - (a) Cessation of a service when a reseller replaces the terminated service with comparable service without interruption as long as such change is in compliance with Rule 1220-4-2-.56; and
 - (b) Discontinuance of a service that has no subscribers.
- (3) No underlying carrier shall terminate local service to a reseller until the following requirements are met:
 - (a) The underlying carrier shall provide no less than thirty (30) days written notice to the reseller that service will be terminated on a date certain along with the reason(s) for such action. A copy of such written notice shall be timely provided to the Authority.
 1. Notwithstanding the above, where the underlying carrier alleges fraud, abuse, or unreasonable interference with the underlying carrier's network, the underlying carrier is allowed to disconnect the reseller after a two (2) business day notice to the Authority, unless the Authority chairman specifically orders otherwise prior to disconnection. If this emergency provision is invoked, the underlying carrier may be required to comply with the underlying carrier's service continuity plan per section (5).
 - (b) Within ten (10) days of receipt of the underlying carrier's written disconnection notice to the reseller, the reseller shall notify its customers advising that their service will be terminated on a day certain. Such notice shall be no less than fourteen (14) days prior to the date of disconnection. The notice shall advise end-users of the following:
 1. Advise its customers of the need to choose another local telecommunications service provider to continue service after a date certain; and

2. Provide customers any and all relevant information, if available, that may assist the customers in selecting another local telecommunications service provider.
- (c) If the reseller fails to fulfill its obligations under section (3)(b), the Authority will notify the reseller's customers seven (7) days prior to termination of the reseller's local service and recover costs associated with such a notice from the reseller.
- (4) Additional Local Service Obligations for Resellers:
 - (a) The reseller must provide the Authority and the underlying carrier any and all relevant information, including but not limited to its customers' names and telephone numbers to ensure that end-user customers will not experience service outage. The reseller must use its best efforts to provide timely and accurate information to the Authority and the underlying carrier.
 - (b) The reseller must file a copy of its notice or the text of the voice message to its customers with the Authority within the fourteen (14) day time period required in 3(b).
 - (c) The reseller shall refund to its customers any credits due as a result of the termination of service within thirty (30) days of the termination of the service. The reseller shall provide information to its customers on how such credits will be determined and distributed.
- (5) Additional Local Service Obligations for Underlying Carriers:
 - (a) Within 60 days of the effective date of this rule, telecommunications service providers with agreements to resell basic local exchange telecommunications service shall file a tariff which outlines a service continuity plan consistent with this Rule Chapter and, at a minimum, shall contain the following provisions.
 - (1) The underlying carrier shall provide, at a minimum, basic local exchange service, as defined in Tenn. Code Annotated § 65-5-208, to the customers of the reseller for at least seven (7) days following disconnection of the reseller's service, or until the customer selects another provider of local service, whichever is less. If a customer selects a new service provider, the underlying carrier may charge the new provider for the service provided at the tariffed rate

- (2) Within the seven (7) days after termination of service of the reseller, the customer must make an affirmative choice to stay with either the underlying carrier or select another carrier. The underlying carrier is not obligated to provide service to the customer after the seven (7) day transition period. Service may be terminated after the seven (7) day transition period unless the end-user has either transitioned to a new service provider or has placed an order to transition to the underlying carrier.
 - (b) Should the reseller fail or refuse to provide notice to its customers as required in (3) above, the underlying carrier shall provide reasonable assistance to the Authority in notifying the customers of the reseller.
- (6) Violation of this rule, including failure to provide customer notice in (3), shall be subject to the provisions and penalties of Tenn. Code Ann. § 65-4-120.